

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JOHN ROBERT SMITH, SHIRLEY HALL
and GENE WALKER**

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:01-CV-855HTW-DCB

**ERIC CLARK, Secretary of State of Mississippi;
MIKE MOORE, Attorney General for the State
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi; MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE; and MISSISSIPPI
DEMOCRATIC EXECUTIVE COMMITTEE**

DEFENDANTS

vs.

**BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL**

INTERVENORS

RESPONSE TO MOTION TO AMEND FINAL JUDGMENT

Secretary of State of the State of Mississippi Delbert Hosemann¹ (“Secretary”) respectfully submits this Response to the Mississippi Republican Executive Committee’s Motion to Amend Final Judgment [Docket No. 92] stating as follows:

1. The relief requested by the Mississippi Republican Executive Committee’s Motion to Amend Final Judgment (“Motion”) is premature. Mississippi has adopted a clear statutory scheme for redistricting of its Federal Congressional districts following the release of Federal census data, and the deadline for completion of the first step in this statutory process is December 4, 2011. Specifically, Miss. Code § 5-3-121 authorizes the creation of a Standing Joint Congressional Redistricting Committee to take up the redistricting process following the

¹ At the time that this action was commenced, Eric Clark was the Secretary of State of the State of Mississippi. Mr. Clark no longer holds that office. Pursuant to Fed. R. Civ. Pro. 25(d), the Honorable Delbert Hosemann, the current Secretary of State of the State of Mississippi, should be “automatically substituted as a party” to this action.

release of Federal census data, and Miss. Code § 5-3-123 states that the Standing Joint Congressional Redistricting Committee has until “thirty (30) days preceding the convening of the next regular session of the legislature” after the release of census data to “draw a plan to redistrict, according to constitutional standards. . . .” The next regular session of the Mississippi Legislature after the release of census data is set to convene on January 3, 2012. Thus, the Standing Joint Congressional Redistricting Committee has until December 4, 2011 to draw a redistricting plan and submit the plan to the Governor and the Legislature.²

2. As a three-judge panel recently recognized, “federal courts should not order around a state legislature unless the legislature has acted in violation of the United States Constitution. . . . [and] federal courts must defer to state redistricting policies so long as those policies are not inconsistent with federal constitutional and statutory laws.” Mississippi State Conference of the NAACP v. Barbour, et al., 2011 WL 1870222, *1 (S.D. Miss. 2011)(citing Upham v. Seamon, 456 U.S. 37, 41 (1982)). No party has even suggested that the policy adopted by the Mississippi Legislature for the redistricting of its Federal Congressional districts following the release of updated census data is either unreasonable or unconstitutional. Accordingly, until this first deadline in the statutory process for redistricting expires on December 4, 2011, it would be premature for the Panel to take any action in connection with the Motion.

3. While the Secretary remains hopeful that the Standing Joint Congressional Redistricting Committee and the Mississippi Legislature will fulfill their statutory duties and timely complete the Congressional redistricting process prior to the January 13, 2012 qualifying

² It should be noted that following the adoption by the Mississippi Legislature of a redistricting plan, the Department of Justice has sixty (60) days to respond to a request from the State for preclearance of such a plan. See 28 CFR 51.42.

deadline,³ if either the Committee or the Legislature fails to meet any of the statutory deadlines in the redistricting process, it would be appropriate for this Panel to take whatever action it deems necessary to insure the completion of the redistricting process prior to January 13, 2012. The failure of either the Legislature or this Panel to timely complete the Congressional redistricting process could necessitate a special election after the presently-scheduled Presidential party primary elections on March 13, 2012 and/or the November 2012 general election at the cost of approximately \$750,000 to the taxpayers of the State of Mississippi.

ACCORDINGLY, the Secretary respectfully submits that the relief requested by the Motion is premature at this time. However, in the event that either the Standing Joint Congressional Redistricting Committee or the Mississippi Legislature fails to fulfill their statutory duties in order to complete the Congressional redistricting process prior to January 13, 2012, this Panel should take whatever action it deems necessary to complete the redistricting process prior to January 13, 2012 in order to avoid the need for a special election.

Dated: October 10, 2011.

Respectfully submitted,

DELBERT HOSEMANN,
Secretary of State of the State of Mississippi

By: /s/ Joseph Anthony Sclafani
One of His Attorneys

³ Pursuant to Miss. Code § 23-15-1081 (Rev. 2007), the Presidential party primary elections will be held on March 13, 2012, and pursuant to Miss. Code § 23-15-1083 (Rev. 2007), the Congressional party primary elections will be held on that same date. Pursuant to Miss. Code § 23-15-299 (Supp. 2010), candidates must qualify for Congressional party primaries on or before January 13, 2012--sixty days prior to the primary elections.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following registered users:

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Dated: October 10, 2011.

/s/ Joseph Anthony Sclafani